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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/035,499

10/26/2001

Richard W. Avery

J-3086

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02/17/2004

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/035,499

Applicant(s)

AVERY ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1 and 3-9 are pending. Claims 2 and 10-18 have been cancelled. Note that, Applicant's arguments and amendments filed 11/14/03 have been entered.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action sent 11/14/03 have been withdrawn:

The rejection of claims 3-5 and 7 under 35 U.S.C. 103(a) as being unpatentable over WO 99/03959 has been withdrawn.

The rejection of claims 1, 6, 8, and 9 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 99/03959 has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section

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122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/42415.

'415 teaches the use of polymeric material in the treatment of hard surfaces to deal with scale forming calcium salts. See Abstract. Polymers which are particularly suitable for use include chitosan acetic acid salt (acetate), Celquat H-100, etc. See page 20, line 1-30. Additionally the hard surface compositions contain water, anionic and nonionic surfactants, etc. See page 21, line 1 to page 22, line 30. Additionally, the compositions may contain cationic surfactants such as cetyltrimethyl ammonium bromide, etc. See page 26, lines 5-20. Additionally, the compositions may contain dicarboxylic acids, citrates, etc. See page 27, lines 5-25. Also, the compositions are formulated within the ranges from 3.5 to 6. See page 29, lines 5-25.

'415 does not specifically teach a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious, at the time the invention was made, to formulate a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of

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success and similar results with respect to other disclosed components, because the broad teachings of '415 suggest a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 3-6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garris (US 5,776,876).

Garris teaches effective, multi-use filter cleaning compositions including 5% to 60% of a strong acid, 1 to 40% of a surfactant and 0.5% to 20% of a sequestrant/builder. The compositions optionally include 0.5% to 10% of a water soluble organic solvent, and/or 0.5% to 10% of nonionic surfactant. See Abstract. Suitable surfactants include anionic, cationic such as various quaternary ammonium chlorides, etc. See column 2, lines 30-55. Organic acids may serve as the builder and suitable acids include citric acid, lactic acid, etc. See column 2, line 60 to column 3, line 10. The compositions may also include a water-soluble polymeric agent as the builder sequestrant and such agents include chitosan, polyvinylamine, etc. Suitable organic solvents include glycol ethers, glycols, alcohols, etc. See column 3, lines 10-35. Examples contain greater than 50% water. See Example 10, 13, etc.

Note that, with respect to the pH as recited by the instant claims, the Examiner asserts that the compositions as taught by Garris et al would encompass compositions having a pH of less than 7 as recited by the instant claims because Garris et al suggest

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composition containing the same components in the same proportions as recited by the instant claims.

Garris et al do not specifically teach a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious, at the time the invention was made, to formulate a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teaching of Garris suggest a cleaning composition having the specific pH containing a surfactant, a poly D-glucosamine, water, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Allowable Subject Matter

Claim 7 is allowed.

None of the references of record, alone or in combination, teaches a hard surface cleaning composition having a pH of below 7 and containing a cellulosic thickener in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

Response to Arguments

With respect to WO01/42415, Applicant states that '415 teaches that when the compositions of '415 are formulated with with surfactants as surface cleaning compositions that it is preferred for there to be a mildly alkaline formulation and that there is a strong teaching away from the pH below 7 when a surfactant is present and the material is for hard surface cleaning. In response, note that, the teachings of a reference are not limited to the preferred embodiments. The Examiner maintains that '415 would suggest acidic compositions as clearly indicated in that it mentions that the compositions are neutral or slightly acidic within the same sentence as it mentions "mildly alkaline". Additionally, '415 clearly teaches acidic compositions in that '415 teaches that preferred compositions have a pH of from 3.5 to 6. See page 29, line 5-20.

Additionally, with respect to '415, Applicant states that there is no teaching of combined use of a disinfectant in addition to a chitosan type compound and a surfactant in an acidic cleaner. In response, note that '415 teaches the use of surfactants of all types including quaternary ammonium chloride compounds which would function as disinfecting agents. See page 26, lines 15-20. Additionally, '415 teaches the use of optional components such as bactericides. See page 29, lines 1-5.

With respect to Garris, Applicant states Garris is drawn to filter cleaners and it is not clear why one would be motivated to use a filter related formulation as a hard surface cleaner. In response, note that, the Examiner maintains that a filter cleaner formulation as taught by Garris would fall within the generic category of hard surface as recited by the instant claims. Alternatively, "hard surface" cleaner as recited by the instant claims is merely an intended use of the composition and is not read as a

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patentable limitation. Additionally, Applicant states that Garris does not disclose the presence of a disinfectant, that the purpose of Garris is to remove biguanide deposits from filters and that one would be directed away from adding even more of what would be considered the class of contaminant to a cleaner designed to remove that type of contaminant. In response, note that, the cationic surfactants such as the various quaternary ammonium chlorides taught by Garris would fall under the broad category of disinfectants as recited by the instant claims. Note that, the use of cationic surfactants also appears in Example 6. Additionally, the cationic surfactants taught by Garris et al are much different from the PHMB that is being removed; they are not polymeric materials and would not be expected to clog filter. Thus, the Examiner maintains that Garris et al provide motivation to formulate a cleaning composition as recited by the instant claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

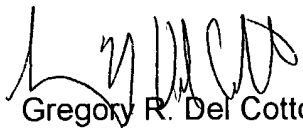
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
February 8, 2004